

TENTATIVE RULINGS for CIVIL LAW and MOTION
December 24, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department 9: (530) 406-6816

TENTATIVE RULING

Case: **El-Badry v. Antibodies, Inc.**

Case No. CV CV 05-949

Hearing Date: **December 24, 2009** **Department Nine** **9:00 a.m.**

Antibodies, Inc.'s motion to require plaintiff Abdalla M. El-Badry to file an undertaking to stay enforcement of the judgment pending appeal is **GRANTED**. (Code Civ. Proc., §§ 917.1, subd. (a) and 917.9; *Banks v. Manos* (1991) 232 Cal.App.3d 123; *Bank of San Pedro v. Superior Court of Los Angeles County* (1992) 3 Cal.4th 797; Declarations of Richard Krogsrud and Shayne Harrington.) The arbitrator awarded Antibodies, Inc. \$170,574.50 in attorney's fees pursuant to 42 U.S.C. § 1988, subdivision (b). The arbitrator's decision specifically notes that an award of fees under 42 U.S.C. § 1988 is not given "as a matter of course." (Page 12 of arbitrator's decision in Exhibit F to Harrington Declaration filed on December 8, 2009.) After examining the record, the arbitrator found that an award of fees was warranted because the plaintiff's claims were "patently unreasonable." (Page 12 of arbitrator's decision in Exhibit F to Harrington Declaration.) An award of fees under section 1988 is not automatic or routine; rather, such award depends upon a specific showing and the exercise of discretion. (42 U.S.C. § 1988, subd. (b); *Vernon v. City of Los Angeles* (9th Cir. 1994) 27 F.3d 1385, 1402; *Legal Services of Northern California, Inc. v. Arnett* (9th Cir. 1997) 114 F.3d 135, 141.) A judgment for such non-routine "cost" is not automatically stayed upon the filing of a notice of appeal. (*Bank of San Pedro v. Superior Court of Los Angeles County, supra*, 3 Cal.4th 797.)

Plaintiff shall file an undertaking in the sum of \$170,574.50 by no later than January 4, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Hayden v. Shestowsky**
 Case No. CV CV 08-3382

Hearing Date: **December 24, 2009** **Department Nine** **9:00 a.m.**

Defendant's motion for preliminary injunction is **DENIED**. (Code Civ. Proc., § 526, subd. (a); Code Civ. Proc., § 664.6.) The Court cannot enforce a settlement agreement, which is not signed by plaintiff, by way of a preliminary injunction which seeks to compel plaintiff to sell his interest in real property. (Civ. Code, § 1624, subd. (a)(3).) Additionally, the preliminary injunction if granted as requested, will end the litigation. (*Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 446-447.) Preliminary injunctions are intended to maintain the status quo of the parties pending trial of the merits. (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.) As a matter of law, it is error to grant a preliminary injunction that ends the litigation. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1472.) Finally, Defendant failed to show that she would suffer irreparable injury if the preliminary injunction was not granted. (Code Civ. Proc., § 526.)

The ex parte order issued by the Court on December 9, 2009 is **DISSOLVED**.

Defendant's request for judicial notice is **GRANTED**.

Plaintiff's objections to the Declaration of Donna Shestowsky are **OVERRULED**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.